



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDV/165761

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 2015, under Wis. Stat., §49.45(5), to review a decision by the Dodge County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on July 1, 2015, by telephone. A hearing set for June 3, 2015 was rescheduled with the petitioner's permission because the Division of Hearings and Appeals initially notified an incorrect agency about the appeal.

The issue for determination is whether the agency correctly denied a divestment waiver request.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Sherryl Spreutels
Dodge County Dept. of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County. She resides in a nursing home in Watertown.
2. Petitioner received nursing home MA until the end of July, 2014, when her daughter/authorized representative allowed the MA to end due to failing to do a review.

3. A new MA application was filed on petitioner's behalf on January 29, 2015, seeking MA back to October 1, 2014. After a lengthy application period caused primarily by non-cooperation by petitioner's daughter, who had petitioner's financial information, the county determined that petitioner's assets were below the limit as of October 1, 2014, but that \$37,843 had been divested.
4. By a notice mailed March 3, 2015, the county informed petitioner that she was ineligible for nursing home MA during the period October 1, 2014 to March 4, 2015.
5. On March 19, 2015, petitioner's new authorized representative filed an Undue Hardship Waiver request on petitioner's behalf. Included with the request was a copy of a letter from the nursing home telling petitioner that she would be discharged May 1, 2015 because she had not paid her bill since August 1, 2014.
6. On April 7, 2015 the county denied the hardship waiver request because it was filed after petitioner's MA eligibility was restored.

DISCUSSION

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat. §49.453(2)(a); Wis. Adm. Code §DHS 103.065(4)(a); MA Handbook, Appendix 17.2.1. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient (\$243.49 in 2014). MA Handbook, App. 17.5. 2.2.

The Wisconsin Administrative Code, §DHS 103.065(4)(d)2.d provides that a divestment penalty can be avoided if there would be an undue hardship, and defines "undue hardship" to mean "that a serious impairment to the institutionalized individual's immediate health status exists." The MA Handbook, App. 17.17.1 provides:

A divestment penalty period must be waived when the imposition of the penalty period deprives the individual of:

- Medical care such that the individual's health or life would be endangered; **or**
- Food, clothing, shelter, or other necessities of life

The Handbook goes on to say at App. 17.17.5 that the following proof is needed with a hardship application:

If the ***member is currently institutionalized***, s/he must submit a copy of the notification sent from the LTC facility which states both the date of involuntary discharge and alternative placement location or other proof that if the hardship waiver is not granted, the individual will be deprived of medical care such that the individual's health or life would be endangered; or deprived of food, clothing, shelter, or other necessities of life.

The county denied the hardship application because, by the time it was filed, petitioner's divestment period already was over and she was eligible for nursing home MA. I must agree with the county. A waiver is allowed only if the person's health or life is endangered. Even if petitioner were discharged from her current nursing home, there are other nursing homes in the Watertown area that would be available to provide similar if not the same services; if no other facilities could provide adequate services,

it is the member's obligation to provide such proof. It is unfortunate that petitioner's nursing home had to incur the large expense, but the delay in determining petitioner's eligibility and divestment period rests with petitioner's own authorized representative; the same person who divested petitioner's funds is also the person who caused the delay in the eligibility determination.

CONCLUSIONS OF LAW

The county correctly denied petitioner's application for a waiver of her divestment period because the application did not show an immediate danger to petitioner's health.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

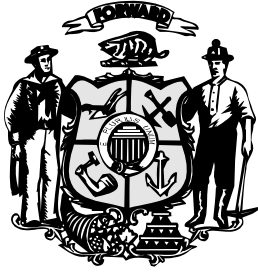
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of July, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 7, 2015.

Dodge County Department of Human Services
Division of Health Care Access and Accountability